

NOTES ON AN ANSWER

To a late Pamphlet entituled,

A N

Examination of the Scheme of Church
Power, laid down in the *Codex Juris
Ecclesiastici Anglicana*, &c.

In a Letter to the AUTHOR ;

By a Student of the Inner-
Temple.

Tantum Religio potuit suadere Malorum.

L O N D O N :

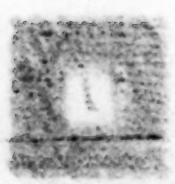
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BRITISH MUSEUM

21.11.

I have the pleasure to inform you that the
 in the last edition of your book, which I
 have seen your pamphlet with tolerable care,
 while upon a railway, I have been that of
 your observations upon the same, I think to well
 of the same books which you cited in your
 reference, and where I found you had wrong
 or partially quoted, marked it in the margin.
 As to the Museum I got the following
 Collection of 14 or 15, which I now make
 public for the benefit of such of your friends
 as may be not care to put themselves to the
 same trouble. I do not pretend it is an



Yours



S I R,

I T is a Rule I constantly observe in Disputes of every Kind to listen most to the Arguments of their Side, whom I think mistaken in their Opinion; upon that Account I have read your Pamphlet with tolerable Care, while upon a cursory View I threw that of your Adversaries aside. I turn'd to most of the Law Books which you cited in your Defence, and where I found you had wrong, or partially quoted, marked it in the Margin: By this Means I got the following Collection of NOTES, which I now make public for the Benefit of such of your Readers, as do not care to put themselves to the same Trouble. I do not pretend it as an

B

Answer

Answer to your BOOK, or as a Justification of your Adversaries. He is very capable of defending his own Writings, as I do not doubt but he will in a proper Time, but 'till a full Answer shall appear, this may serve to convince the World that it is very far from being unanswerable.



NOTES



NOTES on an Answer to a late
PAMPHLET, entituled, *An
Examination of the Scheme
of Church Power laid down
in the Codex Juris Ecclesi-
astici Anglicani, &c.*

THE Law of God, is one of
the Grounds of the Laws of
England, an essential and
constituent Part thereof, and
being incorporated therewith
does not thereby lose its divine Original. P.
5. This is an Argument used by the
Author, to prove the divine Original of
Episcopal Power, but if it be allowed
to prove any Thing it will prove too
much, for then will the Courts of *West-
minster*, nay, even the Piepowder Courts,
be likewise of divine Original.

As to the Claim of independing on all human Authority, the following Words in the same Section (of the Codex) will falsify the Charge. 'It is by way of Distinction from this', (viz. the Authority of the Bishop by the Word of God) 'that Judge Hale, speaking of the legal Power of Bishops, call'd it Jurisdiction in foro exteriori, which is confessed on all Hands to be derived from the Crown,' P. 6. It is in his History of the Law, Page 30. but does not say any Thing of the Authority of the Bishop, by the Word of God. In the next Page he speaks thus. 'Now the Matters of Ecclesiastical Jurisdiction are of two Kinds, Criminal and Civil; the Criminal Proceedings extend to such Crimes, as by the Laws of the Kingdom are of Ecclesiastical Cognizance; as Heresy, Fornication, Adultery, and some others wherein their Proceedings are *pro reformatione Morum*, & *pro Salute animæ*; and the Reason why they have Cognizance of those and the like Offences, and not of others, as Murder, Theft, Burglary, &c. is not so much from the Nature of the Offence, (for surely the

' the one is as much a Sin as the other ;
 ' and therefore if their Cognizance were
 ' of Offences, *quatenus peccata contra De-*
 ' *um*, it should extend to all Sins what-
 ' soever, it being against God's Law,)
 ' but the true Reason is, because the
 ' Law of the Land has indulged unto
 ' that Jurisdiction the Conuzance of
 ' some Crimes and not of others.

One would also hope that the Examiner
 should readily allow one Point more, that
 the Disuse of those Commissions, and the
 Bishops having exercised Jurisdiction in
 their own Name, and under their own Seals
 ever since the final Settlement of the Refor-
 mation under Queen Elizabeth, just in the
 same Manner as they did before the Comis-
 sions were granted, is a much stronger Argu-
 ment against them, than any Thing that can
 be inferred from the Use of them. P. 13.

' But (says Hale in his History of the
 ' Laws, P. 30,) That is no Impediment
 ' of their deriving their Jurisdiction
 ' from the Crown; for 'till 27. H. 8.
 ' Cap. 24 the Process in Counties Pala-
 ' tine ran in the Names of the Counts
 ' Palatine, yet no Man ever doubted,
 ' but that the Palatine Jurisdiction

‘ were derived from the Crown.’ And *Coke* in *Camdrie’s Case* Answers it, by the Example of a Leet holden by a Subject which is kept in the Lord’s Name, and yet is the King’s Court, and all the Proceedings therein are directed by the King’s Laws. Neither does the 1 *El.* Cap. 1. allow a Divine Independent Right, when it enacts, ‘ That such Jurisdiction, &c. Spiritual and Ecclesiastical, as by any Ecclesiastical Power or Authority has heretofore been, or lawfully may be exercised or used for the Visitation of the Ecclesiastical State and Persons, and for Reformation, &c. of the same, &c. shall for ever be united and annexed to the Imperial Crown of this Realm.’ And this Act *Lord Coke* says appears from the Title (*an Act restoring to the Crown the antient Jurisdiction*) to be an Act of restitution. 4 *Inst.* 325.

It is declared that ‘ Arch-Bishops, Bishops, Arch-Deacons, and other Ecclesiastical Persons, have no Manner of Jurisdiction, Ecclesiastical but by, under, and from, his Royal Majesty.’ But this ought to be interpreted in accomodation to the Design of the Act,

Act, i. e. as relating to standing Officers in Ecclesiastical Courts. P. 25. But who ever will read the whole Preamble will see these Words are to be taken in their utmost Extent.

*And what the Sense both of King and Parliament in this Matter (Exemptions) was, appears fully by the 31 H. 8. c. 13, 23. and be it farther enacted ——— that such of the said Monasteries, &c. ——— and all Churches and Chapels to them, or any of them belonging, which before the Dissolution ——— or coming to the King's Highness, were exempted from the Visitation or Visitations, and all other Jurisdiction of the Ordinary or Ordinaries, within whose Diocese they were situate or set, shall from henceforth be within the Jurisdiction and Visitation of the Ordinaries, within whose Diocese they or any of them be situate or set; or within the Jurisdiction and Visitation of such Person and Persons, as by the King's Highness shall be limited or appointed. P. 30. it appears fully to be that the Bishops had not any independent Right *Jure Divino* of visiting, &c. since it puts them within the Jurisdiction and Visitation of such Persons, as by the King shall be appointed.*

P. 46. There is likewise an Account of the Complaint made by Arch-Bishop Bancroft, who exhibited Articles in the Name, as Lord Coke tells us of the whole Clergy. 3. Jac. 1. complaining of the Grant of Prohibitions wherein it was insisted, ' That all Kinds of ' Prohibitions, being original Writs, ought ' only to issue out of the Chancery, and nei- ' ther out of the King's Bench nor Com- ' mon Pleas.' To which the Judges replied, ' That it was what by Law they ought to do, ' and always had done, and which by Oath they ' were bound to do. But if it be holden in- ' convenient, and they can in discharge of ' us obtain some Acts of Parliament to ' take it from all other Courts than the Chan- ' cery, they shall do unto us a great Ease.' Is it an Affront to the Veracity of these Great Men, to believe them when they say, it is a Burden? Or is it an Affront to their Under- standing to think they should desire to be eased of it? Had the Author been pleas'd to have given us the Whole of the Reply, he would never have asked these Ques- tions, it goes on thus. ' But the Law ' of the Realm cannot be changed but ' by Parliament, and what Relief or ' Ease such an Act may work to the Subject,

‘ Subject, wise Men will soon find out
‘ and discern.’

P. 49. *The Complaint of Arch-Bishop Bancroft is represented as made with a Self-interested and ambitious View ——— as only aiming at Church Power, whilst it is insinuated, with his usual Candour, that an Imagination of Clergymen’s being again at the Head of the Court of Chancery might be the Inducement why the Power is chose to be lodged there. ——— But to put the Scheme of Church Power out of the Question, let me observe that the same Complaint was made afterwards by the Lord High Admiral of England, upon Account of Prohibitions to the Court of Admiralty, I don’t find that any of the Admirals had Expectations of having the Seals. Neither do they pretend in that Complaint that Prohibitions should not issue from the King’s-Bench, but allow the direct Contrary ; for the Words of the Seventh Objection are, ‘ That the Agreement made between ‘ the Judges of King’s-Bench and the ‘ Court of Admiralty, in 1575, for the ‘ more quiet and certain Execution of ‘ Admiral Jurisdiction, is not observed as ‘ it ought to be,’ 4. Inst. P. 134.*

Subject

C

Ano-

Another Point in which an Alteration might be hoped for is, the Time of applying for a Prohibition, P. 58. This was one of Bancroft's Objections, to which it was answer'd by the twelve Judges, ' That ' Prohibitions by Law, are to be granted at any Time, to restrain a Court, ' to intermeddle with, or execute any ' Thing, which by Law, they are not ' to hold Plea of — for their Proceedings are coram non Judice, 2. Inst. 602.

The Bishops and Clergy in Convocation, assembled by Virtue of the King's Writ, are enabled to make Laws Spiritual for the Government of the Church, which being ratified by the King, have a legal Authority in Matters Spiritual. By 25 H. 8. Cap. 19. it is a Præmunire for the Convocation to meet without the King's Writ. And when they are met to do any Thing without the King's Licence, and then no Resolution of theirs to have the Force of a Canon, unless the King confirm it. Nor is it then valid if it be contrariant to, or repnguant to the Laws, Statutes, and Customs of this Realm, or be to the Damage or Hurt of the King's Prerogative Royal. — And of this, the Courts

Courts of *Westminster-Hall* must judge. And *Hale* says in his *Analysis*, P. 12. If Ecclesiastical Laws are not confirm'd by Parliament, the King may revoke and annul them at his Will and Pleasure. N. B. the 25. H. 8. Cap. 19. is but Declaratory of the Old Common Law. *Coke*, 4. Inst. 323.

And here I must again complain of the Disingenuity of this Writer, (the Examiner) to put upon his Reader the Arguments of Council as the Determination of the Court, — but what are the Arguments? 'That in
' the Primitive Church, the Laity were pre-
' sent at all Synods, — when the Emperor
' became Christian, no Canon was made
' without the Emperor's Consent, — the
' Emperor's Consent included that of the Peo-
' ple, he having in himself the whole Legi-
' slative Power, which our Kings have not.
' — Therefore, if the King and Clergy make
' a Canon, it binds the Clergy in Re Ecclesi-
' asticâ but it does not bind Laymen: They
' are not represented in Convocation, their
' Consent is neither asked nor given.' — As
he is not pleased to tell us what was the De-
termination of the Court in this Case of
Matthews and Burditt reported by Salkeld,

it can have no Authority. P. 95. The Disingenuity is on the Side of this Author, in calling it in an Argument of the Council, for every Word here set down, is the Determination of the Court in this Case of *Matthews and Burditt*, and so reported in *Salkeld*, 412.

The next is the Opinion of Lord Coke, 'that the Convocation may make Constitutions, by which those of the Spirituality shall be bound; for this, that they all by Representation or in Person are present, but not the Temporality,' who founds it altogether upon two Cases in the Tear Books.

—— And he will permit me to say, that the Doctrine under Consideration is too important to be rested on the single Opinion of any Man whatever, P. 96. This was not a single Opinion, but the Opinion of two Chief Justices, and divers other Justices at a Committee of Lords, 12 Co. 72.

It had been but common Justice, — if the Examiner had, to the Authority of Lord Chief Justice Vaughan, added, that likewise Lord Coke himself. — Coke Chief Justice said, 'That a Convocation hath Power to make Constitutions for Ecclesiastical Things or Persons.' The direct contrary

trary Opinion is founded thus upon the same Authority, P. 96. This is a single Opinion, but founded on 21 E. 4, 46, which is one of the two Cases before mentioned, therefore must be construed agreeable to the former Opinion, and then it will be, that a Convocation hath Power to make Constitutions only for Ecclesiastical Persons in Ecclesiastical Things, as was adjudg'd in the Case of *Matthews and Burditt*, in *Salkeld*, 412, as before taken notice of.

Lord Coke, after he has finish'd his *Treatise of Temporal Crimes*, says, 'That we have found by woeful Experience, that it is not frequent and often Punishment that doth prevent like Offences; Melior est enim justitia præveniens, quam severe puniens. But I leave it to the Divines to inform the inward Man, verbo informante, the outward Man will be easier reform'd, Virgâ reformante,' P. 113. The Words as they stand in Lord Coke, in his Epilogue to the Third Institute, are, 'But I leave it to the Divines to inform the inward Man, who, being well inform'd, Verbo informante, the outward Man will be easier reform'd,

form'd, *Virgà reformante.*' By which is plainly meant Preaching and nothing more. Therefore I fear the Imputation in the next Page of my Author will fall upon the Divines, his Words are these, 'Are even Murders, Robberies, Adulteries, Perjury, Blasphemy, Profaneness, and all Immorality, less frequent and abated; or do they not manifestly increase? It is too apparent they do; to what then can it be imputed, but to the Defect of preventing Justice.' God forbid that it should not be without Foundation! However, I hope the Divines will take Warning from this Admonition of their Champions.

In the Chapter of the Codex, &c. intituled, The same Crimes punishable both in Spiritual and Temporal Courts, after the Learned Author has made good that Position by Way of Commentary on the 9. Ed. 2. C. 6. intituled, where a Suit for one Offence may be prosecuted both in Court Spiritual and Temporal, he adds, 'It was hinted before, that this Rule holds not in capital Crimes; but however in such Cases, the Infliction of Ecclesiastical Punishment is not wholly excluded.' — In Support of this

this, he mentions the Case of Searle, a Clergyman in Essex, who having been found guilty of Manslaughter, and allowed his Clergy, was afterwards sued in the Ecclesiastical Court in order to be deprived. — He appealed from that Court to the Arch-Bishop's, where he desired to be admitted to his Defence that he was not Guilty. Dr Bird, the Arch-Bishop's Judge, came to Lord Chief Justice Hobart for his Directions, who says, ' And I, (tho' I doubted not, yet) conferred, ' and we agreed, that Felony and other ' Capital Crimes, were not examinable in ' the Ecclesiastical Courts, no, not for Pur- ' poses that were examinable there, as in ' this Case of Deprivation; and therefore ' they may not originally examine such a ' Crime to prove a Man Criminous; much ' less when he is so proved in the proper ' Court, to impeach the Sentence, in a Court ' improper: But they may build a Sentence ' of Deprivation on such a Conviction, and ' they are bound by it, and it is dangerous ' for a Judge Ecclesiastical to come against ' it.' — Hereupon the Ecclesiastical Court proceeded, and Searle applies to the Court of King's Bench for a Prohibiton. — And it was agreed by the whole Court, that

no Prohibition ought to be granted. — Under this unanimous Opinion of the Court of King's Bench, the Cause is permitted to go on; and the next Year, after an Appeal to the Court of Delegates, a Prohibition was granted in the Common Pleas. — Judgment was given upon open Argument by all the Judges (of that Court whereof Lord Hobart was Chief) that he ought not to be questioned now in the Spiritual Court for this Manslaughter, as the Case stands. Considering what had passed, it may reasonably be presumed from these Words, now, and as the Case stands, that some Alteration had happen'd therein, some Addition to the Plea in the Spiritual Court, since the denying the Prohibition in the King's Bench. But suppose there had not, and that the Learned Author had in his Thoughts at that Time, the Judgment in the Court of Common Pleas, is the Determination of that Court — of so great Weight, that no one, at the Hazard of his Reputation, may adhere to the Judgment of the Court of King's Bench? P. 133, 136. I was oblig'd in Fairness to set down thus much of my Author, upon which I shall make these three Remarks, 1st. I beg to know with whom did Lord Hobart

Hobart confer and agree? Not with the Judges, for we see that they were all in open Argument of another Opinion, with whom *Hobart* likewise agreed. 2dly, That it appears from *Hobart* 288, that there was no Alteration nor Addition, but the Reason they went upon is, that he being freed by his Clergy a *Pana*, is likewise freed a *Culpá*, so cou'd not be farther punish'd, *Hob.* 292. 3dly, Where there is divers Judgments in the same Case, the latter, whether in King's-Bench or Common Pleas, makes the Precedent. Therefore I am candid enough to think that the learned Author had not in his Thoughts at that Time, the Judgment in the Court of Common Pleas, and whoever supposes otherwise, must believe him to be guilty of an artful Omission.

Were this Point to come again under Consideration, wou'd not these Doubts be expected to be clear'd? — Whether as by Homicide a Clergyman becomes irregular, i. e. is ipso facto disabled from performing any Part of his Function, a Pardon without any express Words, or by Implication only, discharges his Disability, P. 139. My Author wou'd

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never

never have asked this Question had he read the Case in *Coke*, 6. Rep. 13, which is this, a Parson was deprived for Adultery, afterwards a general Pardon came, which pardon'd the Adultery; it was adjudg'd the Parson was *ipso facto*, restor'd to his Benefice.

How often he may offend in this Particular? And whether, if he be freed from the Fault as well as from Punishment, as often as this Crime may again be committed, he is not to be looked upon as an innocent Man upon every Conviction? Ibid. No Man can have his Clergy above once, therefore can be made Innocent but once.

If the Statute makes him Innocent, why shou'd he forfeit his Goods at Common Law by the Conviction? Or if he may forfeit them at Common Law, why may he not forfeit his Benefice according to the Ecclesiastical Laws of the Land? Ibid. Because by the Common Law he shall forfeit his Goods and Chattels, but no Freehold or Inheritance. *Co. Lit.* 391.

And why the same Statute that makes him Guiltless, shall leave it to the Direction of the Justices to imprison him for a Twelve, Month? *Hobart*, 293. 'Says, and because
the

‘ the Party should be understood to be
 ‘ absolutely freed and discharg’d, the
 ‘ Statute takes from the Judges all Power
 ‘ of farther Punishment, but by the
 ‘ mild Word of Correction, gives them
 ‘ Power to detain them in Prison one
 ‘ Year and no more.’

These are Difficulties, which the Examiner, if he had pleased, cou’d perhaps have resolved us; but implicit Faith may be more reasonable in Law, than it is in Divinity. Ibid. These are no Difficulties as I have shew’d by answering them, neither do the Lawyers desire an implicit Faith in their Profession: Wou’d to God no other Set of Men had Arrogance enough to claim it in theirs.

I can’t forbear taking notice of another Opinion of Lord Hobart, which may show that he thought Homicide, notwithstanding this Statute might have an Ecclesiastical Consideration. Ibid. The Case my Author mentions is that of George Abbot, Arch-Bishop of Canterbury; but it is too long to put down here, as it is nothing to the Purpose, for there it appears there was no Trial at Com-

mon Law, so the Statute cou'd not work by way of Pardon ; therefore he not being freed *a culpâ*, the Offence might have an Ecclesiastical Consideration, but of that they did not determine, but only gave the Advice in *Majorem cautelam, si qua forte sit Terregularitas*, Spelman's Reliq. P. 121, and Hobart 121, is direct contrary, for he there says they may not originally examine such a Crime to prove a Man Criminous.

These are the Observations that occur'd to me upon a slight Examination of your Answer, and I have neither Desire nor Opportunity to increase them : As these are sufficient to convince me, as I dare say they will every reasonable Man, that you understand your own Motto,

Dolus an Virtus, quis in hoste requirat ?

You conclude your Book with setting up a new Candidate, which tho' perhaps less to be found Fault with than most of your Patrons, will, I believe, be as little likely to succeed, tho' was it to have

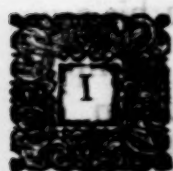
have that good Fortune, I am perswaded
the Party you are engaged for wou'd find
it more to their Prejudice than Advan-
tage, unless they claim a Divine Right
of being abusive.



POST-



POSTSCRIPT.



Purposely omitted taking notice of what you say, Page 124, concerning Purgation, intending to treat of it more largely than I have of any Thing else in your Book ; it being in my Opinion, a most pernicious Doctrine, as it tends to make the Clergy the most absolute of Tyrants. I did not design taking notice of, or defending any Thing that has dropped from your Adversary's Pen, but he has given so full a Description of this Canonical Oppression, that I beg leave to set down his Words at length, and then consider your Remarks upon them. Persons accused, says he, Page 80, upon Common Fame, were upon this Accu-
tion

tion alone, unsupported by any Evidence, cited to appear in the Spiritual Court, and there charg'd with the Crime; if they denied the Charge, the Judge assigned them to appear with five or six of their Neighbours (which were call'd Compurgators) and make a Purgation; which was done by the Defendants Swearing, that they believed what he had Sworn to be true. If the Defendant refused to Purge himself on his own Oath, or cou'd not procure Compurgators to Swear, as before, for him, he was looked upon as a Convict, and the Judge proceeded to Sentence, in the same Manner, as if he had been convicted upon his own Confession, or upon Evidence. — The Perjury and Injustice that must be the Consequence of such a Law, appear too plainly to make anyone have a Desire to restore it; but those who wou'd acquire Wealth and Power from its Restitution; but let us hear what you say in the Defence of it. You affirm Page 125, that no Persons were put to their Purgation upon common Fame, unsupported by Evidence; neither did common Fame, in

a legal Sense, mean any general Report or Scandal, which might have arisen from malicious Persons, and without Foundation: But such as from Circumstances and Presumptions had gained Credit and Belief, and had given great Offence to the grave, the sober, the better Part of the Parish. — Yet if any Person was prosecuted, he had, say you, the Liberty to deny there was any Fame, such as I have before mention'd; and before he cou'd be put to his Purgation, a legal Proof was required of those Circumstances and Presumptions that had occasion'd the common Fame. So that the Evidence required to support the common Fame, was the Evidence of the common Fame; and every Body knows how easy the grave, the sober, the better Part of a Country Parish are in giving Credit to the Scandal of malicious Persons, for Circumstances, light as Air, are to the zealous Confirmation strong as Proofs of Holy Writ. You farther endeavour to defend it by the Practice of Common Law. Lord Coke, say you, in his Comment upon *Magna Charta*, says, when

when Treason and Felony is committed, and the common Voice and Fame is, that *A.* is Guilty ; it is lawful for any Man that suspects him, to apprehend him : This Fame *Bracton* describeth well, *Fama, quæ suspicionem inducit, oriri debet apud bonos & graves, non quidem malevolos & maledicos sed providas & fide dignas Personas; non semel sed Sæpius; quia clamor minuit, & Defamatio manifestat.* You might have added, as Lord Coke does, but he (the Prosecutor) must shew in Certainty the Cause of his Suspicion ; and whether the Suspicion be just or lawful, shall be determin'd by the Justices in an Action of false Imprisonment brought by the Party grieved, or upon a *Habeas Corpus*, &c. Let us now consider the Difference of the Two Cases ; in the First, the common Fame being proved, the Defendant is to be punish'd, unless he can procure Compurgators to swear to the Belief of his Innocence. But in the Second, the Cause of the Suspicion being allow'd, he is to have the Advantage of a fair Trial by his Country, and then, unless there is direct Proof of the Crime, he is acquitted ;

B

and

and tho' in the First Case, the common Fame shou'd appear to be ill grounded, or Compurgators shou'd swear for his Innocence, the Defendant can have no Redress for his injured Character ; but the Prosecutor may glory in his Villany. In the Latter, if the Suspicion appears to be ill grounded ; in an Action of false Imprisonment, the Defendant will have Costs and Damages. I believe I have said enough on this Head to justify me in using the Words of the Examiner, Page 84, when he says, these Considerations, not to mention the Guilt of Perjury, which the Compurgators, as well as Defendants, were too frequently led into, are sufficient to justify the Wisdom and Equity of the Legislature in disarming the Church of this Engine of Canonical Oppression. There is likewise another kind of Purgation, which, tho' not immediately recommended by the Learned Author of the *Codex* ; yet, doubtless, were these Candidates to succeed, there wou'd be found some high Priest or other, that wou'd be pushing for this likewise, in order to render entire, the Independency of the Clergy.

I mean the Purgation of Clerks Convict, which you take notice of in Page 137, and which was taken away by 18 *El.* Cap. 7. This was in the Time of *Thomas De Becket* by Usurpation (says *Croke*, Vol. 2. P. 431) received here in *England*, and *Hobart* 289 says, is no Ordinance of the Common Law, but it is a Practise among themselves, rather overseen and winked at, than approved by the Common Law. Serjeant *Hawkins* in his Learned Treatise of the Pleas of the Crown, *Lib. 2. Ch. 33*, speaks thus concerning it. Antiently, wherever a Clerk was delivered to the Ordinary by a Temporal Judge, his Person ought to be kept in the Ordinary's Prison, 'till he had been tried before him by a Jury of Twelve Clerks: For the Clergy never pretended to an absolute Exemption from all Kinds of Punishment for their Crimes, but only to a Privilege of being tried only by Ecclesiastical Judges. — But this Privilege (says he) was often very much abused, and therefore after *West*, 1. C. 2, which requires that no Clerk shall be deliver'd without due Purgation; the

Courts of Common Law wou'd never deliver over a Clerk to the Ordinary, without a previous Enquiry into, or Trial of his Crime. Whereupon, if the Clerk was found Guilty, he absolutely forfeited his Goods, and the Judges wou'd often in their Discretion make a special Delivery, *Abfq ; Purgatione Facienda* ; but yet (says *Hobart* 289) it is true, that if the Court did deliver them after Conviction, without that Clause, they wou'd and did purge them ordinarily after Conviction. So that (as he says afterwards 291) by a counterfeit Verdict *de Credulitate*, they did frustrate both the Jury of Indictors *de Crudelitate*, and the Jury of Triers *de Scientiâ & merâ veritate*. This was the State of Purgation, when the 18 *El.* enacted the Delivery of Clerks Convict without Purgation. Whereby the Statute says truly (if we give Credit to Lord *Hobart*) that sundry Perjuries and other Abuses were avoided. The Perjuries indeed (says his Lordship) were sundry : One in the Witnesses and Compurgators, another in the Jury ; and of the Third the Judge himself was
not

not clear, all turning the solemn Trial of Truth by Oath into a ceremonious and formal Lye. I cannot quit this Head without mentioning one Thing more out of the excellent Treatise before taken notice of, which may serve as an additional Remark to what I have already said upon *Searle's Case* as related by you Page 133, 136, and will shew you how little Reason you had to be angry with your Adversary, for saying that it was upon a sudden Motion, that the Court of King's Bench in that Case refused to grant the Prohibition, which you wou'd have your Readers think he did only to lessen the Authority of this Precedent. In the Pleas of the Crown, 365, it is said, whether the Statute, 18 *El.* enure as a Pardon or Purgation, it seems to take from the Spiritual Court the Power of depriving the Party for the Crime for which he has had his Clergy. — Yet *Watson* in his Clergyman's Law, holds an Opinion on the Authority of *Croke's 2 Report*, that a Clergyman may be deprived for Manslaughter after he has had his Clergy, not observing (as I suppose) that what
is

is said in this Book, was on the Sudden on a Motion for a Prohibition in the King's Bench; and that in the same Case a Prohibition was afterwards actually brought and declared on in the Common Place, and Judgment thereupon solemnly given for the Plaintiff upon open Argument by all the Judges. And now I shall beg leave to conclude in your own Words, Page 136: Were these Omissions willful? If so, what Credit can we give to your Veracity? Was you ignorant of them? What reliance can we have on your Judgment?

F I N I S.

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